

Ongoing matters requiring notification by DIFC Companies

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Because the DIFC maintains a public register, companies established there must keep it updated.

We identify these mandatory obligations below.

It should be noted that the requirements below are only those imposed by the Commercial Companies Law No. 8 of 1984 (as amended), DIFC Law No 2 of 2009 and the DIFC Company Regulations upon a DIFC Company limited by shares ("**LTD**"). Should the LTD be subject to NASDAQ Dubai or be an entity regulated by Dubai Financial Services Authority ("**DFSA**"), additional submissions or reporting requirements will operate.

Mandatory Filing Requirements

These filing requirements are as follows.

- Notice of allotment of shares

Shortly after incorporation in the DIFC and once the entity has an operational bank account (for the shareholders to deposit their share contribution), a first allotment of shares should take place. As the first allotment is taking place, the Registrar is to be notified using the prescribed form available on the DIFC website. Filing such notice for the first allotment of shares is compulsory. For the rest of the allotments, this filing can be done as and when the allotments take place.

- Annual return

An Annual Return provides a '*snapshot*' of general information regarding the LTD and includes details such as the list of directors, secretaries, registered office address, list of shareholders, list of members and the share capital of the company. This form has to be filed with the Registrar (following the format stipulated by the Registrar on the DIFC website) during the period of 1st January until 31st March in the year following incorporation. This is a recurring obligation on the LTD and must be complied with on an annual basis.

- Annual general meeting

A LTD is required to file a copy of its accounts and audit reports with the Registrar within 7 days after its Annual General Meeting ("**AGM**"). The AGM must take place within 15 months of the previous meeting and within a minimum of 6 months of the end of the LTD's financial year.

- Appointment of auditor

A LTD is required to file a '*Notice of Appointment of Auditor*' with the Registrar immediately upon appointment of an auditor. This is to be done sometime during the first financial year upon the entity's incorporation. This notice will need to be filed again with the Registrar after every AGM where the auditors

have been re-appointed or changed.

- Cessation of auditor

A LTD is required to file a '*Notice of Cessation of auditor*' with the Registrar immediately upon the resignation or removal of an auditor. This is to be done 14 days from the date of the cessation. This notice will need to be filed with the Registrar each time an auditor resigns or is removed.

- Financial statements

A LTD must submit its financial statements to the Registrar's office on an annual basis at the end of each financial year. This requirement only applies to non-regulated entities.

- Renewal of commercial license

This license is typically valid for 12 months from the date of registration and must be renewed with the Registrar within a maximum of 30 days post the expiry date of the entity. Failure to renew this license within the said time period will result in the entity being considered inactive.

- Name change

A LTD's shareholders or board members can decide to change a company name and/or trade name by a special resolution, provided that the new name is acceptable to the Registrar. The change of name takes effect from the date on which the Registrar issues the '*Certificate of name change*'. A LTD must amend its articles of association in order to reflect a change of name within 30 days from the date of issuance of the certificate or within such longer period as the Registrar has the discretion to allow.

- Address change

If a LTD is changing its registered office address, it is required to inform the Registrar by filing a '*notice of change of registered office*' using the form prescribed. This filing has to be within 14 days of the date of the change.

- Change of officeholders

If a director, manager or secretary of the LTD is appointed after the initial incorporation of the company, or alternatively, if the director, manager or secretary retires, resigns, or is removed from office, the LTD is required to file a '*notice of change*' of directors, managers or secretaries with the Registrar using the applicable forms prescribed within 14 days of the change. Similarly, in the event there is a change in the address or name of an office holder, i.e. a director, secretary or manager, the LTD is required to file a '*notice of change*' with the Registrar using the prescribed form within 14 days of the change.

- Change of members

In the event there is a change in the members of a LTD, a '*notice of change*' has to be filed with the Registrar using the prescribed form within 14 days of the change. Similarly, if there is a change in the address or name of a member, the LTD is required to file a '*notice of change*' with the Registrar using the prescribed form within 14 days of the change.

- Increase/reduction in share capital

In the event a LTD resolves to increase/reduce its paid capital, it is required to notify the Registrar within 14 days of the change using the prescribed forms and is also required to provide the requisite ancillary documents specified by the Registrar in its guidelines, including a copy of the special resolution and the amended articles of association of the company (if applicable).

- Transfer/sale of shares

In the event a LTD resolves to sell or transfer its shares to a third party or an existing shareholder, it is required to submit a '*notice of Sale or Transfer of Shares or Membership Interest*' to the Registrar within 14 days of the change using the prescribed forms and is also required to provide the requisite ancillary documents specified by the Registrar in its guidelines, including a copy of the board resolution authorizing the sale, a declaration of acceptance from the seller indicating approval of the sale/transfer of shares and particulars of the new shareholders.

- Amendment to the articles of association

If a LTD has amended its articles of association, it is required to submit a '*notice of change of articles of association*' to the Registrar. This notice has to be filed within 14 days of the change in the prescribed form and the LTD also has to provide the requisite ancillary documents specified by the Registrar, including a copy of the Board or shareholder resolution approving the amendments.

- Dissolution of a LTD

In the event a LTD is being dissolved or voluntarily wound up, the entity is required to approach the Registrar and provide a letter evidencing the intention to dissolve. The Registrar will then provide the LTD with a document checklist specifying which documents are to be filed with the Registrar. Details of the documents required are also specified in the Registrar's guidelines available on the DIFC website. In the case of a regulated LTD, in addition to the documents specified by the Registrar, a written approval from the DFSA is also required before proceeding with dissolution.

Penalties

Failure to comply with the above filing requirements on the part of a LTD will result in the imposition of administrative fines by the Registrar. Fines imposed by the Registrar for non-compliance with DIFC company laws requirements typically range between US\$ 1,000 to US\$ 50,000 depending on the nature of the non-compliance. For instance, failure to file the Annual Return will result in the levying of a fine up to US\$ 2,000 on the LTD.

Furthermore, if the LTD is in operation, the company's officers could be prosecuted by the Registrar on the basis of their personal responsibility under the DIFC company laws for ensuring that company information is submitted on time.

Best Practice

Companies are encouraged to appoint an experienced and competent person for the role of Company Secretary. A Company Secretary's position is significant as he will be able to ensure that the company's books, registers and records are properly maintained and this will in turn ensure that filings with the Registrar are made in a timely manner.

Further, in keeping with good corporate governance practices, the management should ensure that the proper maintenance of books, registers and records is emphasized as an integral part of a company's values and policies.